In the Supreme Court of the United States

OCTOBER TERM, 1978
NO. 78-1823

TEAMSTERS LOCAL UNION NO. 30, and TOM SEVER and all others similarly situated,
Petitioners,

v.

HELMS EXPRESS, INC., a division of Ryder Truck Lines, and the EASTERN CONFERENCE OF TEAMSTERS,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioners herein pray that a Writ of Certiorari be granted by this Court to review a determination of the United States Court of Appeals for the Third Circuit, made January 5, 1979, which affirmed a determination of the United States District Court for the Western District of Pennsylvania, made February 2, 1978 which granted the Defendants' Motions to Dismiss on the ground that the decision of the Teamster Grievance Committee in a grievance filed by Petitioners is final and would not be reviewed by the Court. The Petitioners contend that the determination of the Court is not well taken and should be reversed. Petitioners filed a timely petition for rehearing *en banc* with the United States Court of Appeals for the Third Circuit which was denied on March 8, 1979.

JURISDICTION

Jurisdiction of this Court to review the determination of the United States Court of Appeals for the Third Circuit is given by 28 U.S.C. 1254(1). This petition is being made by the plaintiffs in the cause below, parties to said action.

TIME

The determination of the United States Court of Appeals for the Third Circuit denying Petitioners' timely petition for rehearing was made on March 8, 1979. This petition is being filed within ninety (90) days from the date of said determination.

REASONS WHY THIS PETITION SHOULD BE GRANTED

This case involves several of the Rules of this Court warranting the grant of a Petition for a Writ of Certiorari. This case is:

1. Of great public importance;

2. There is a conflict between the Circuits in the Application of the legal principles involved;

3. There is a conflict between the determination of the Court of Appeals for the Third Circuit and prior determinations of this Court, including *United Steel Workers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593;

4. The determination has so far departed from the accepted and usual course of judicial proceedings in that both the District Court and the Court of Appeals, in granting Respondents' motions to dismiss, did not accept as admitted Petitioners' well pleaded allegations found in its complaint.

FACTS

This case involves the question of whether finality should be given to an award of the Eastern Conference Joint Area Committee (hereinafter ECJAC). This Committee is a body created by the National Master Freight Agreement for the purpose of hearing and deciding grievances between members of local Teamster Unions and the companies by whom they are employed.

The National Master Freight Agreement (hereinafter NMFA) is a collective bargaining agreement between a multi-employer bargaining group of hundreds of trucking companies and the International Brotherhood of Teamsters. Petitioner Teamster Local 30 is a party to the NMFA as is Respondent Helms Express. The NMFA, in Article 20 contains the following language:

> The Union and the Employer recognize the principle of a fair day's work for a fair day's pay; that jobs and job security of employees working under this Agreement are best protected through efficient and productive operations of the Employer and the trucking industry. The Employer may establish *reasonable work standards* which shall take into account all factors relating to the work assignment, run terminal and territorial operational conditions, *subject to agreement and approval with the Local Union*, and to be filed for approval with the Conference Joint Area Committee. (Emphasis added.)

On October 22, 1976, Petitioner Sever, a dockman, and ten other employees of Respondent Helms received letters from Helms informing them that they were being suspended from work without pay for violating a "productivity measurement program" instituted by the Company. From that date on the Company continued to suspend employees for allegedly violating these so-called productivity or work

standards. Well over one half of the dockmen employed by Helms at its Irwin, Pennsylvania terminal have been warned or suspended for allegedly violating the "productivity measurement program." The suspensions in question last for up to 30 days.

The work or productivity standards referred to in the suspension letters were put into effect and suspensions made pursuant thereto without any sort of agreement or approval by the local union whatsoever, despite the clear and unambiguous language in the contract requiring "agreement and approval" by the local union before work standards may be established.

In addition, the alleged work standards were unreasonable which also violates Article 20, and were put into effect without negotiations of any kind between the company and the local union. Further, the standards were implemented in bad faith by the company.

Grievances were filed by Petitioner Local 30 on behalf of Petitioner Sever and the other employees suspended on October 22, 1976, with Petitioner Sever's grievance serving as the "pilot" grievance for all of the others. The grievance made its way to the ECJAC, which is comprised of an equal number of management and union representatives. On April 27, 1977, following a hearing before the ECJAC to determine the propriety of the suspensions, the ECJAC made the following decision:

> The panel in executive session, motion made, seconded and carried that, due to the company's failure to obtain agreement with the local union or approval of this committee prior to putting into effect the productivity measurement program, the specific claims listed in this case are upheld on the basis of 8-hours' pay for each day of suspension. The committee further ruled that the productivity measurement program, as presented, is not in violation of the contract and may be implemented beginning on May 1, 1977. (6 App.)

No opinion or explanation other than the above was made by the ECJAC. Petitioner Local 30 sought additional internal review of the decision of the ECJAC, but ultimately, Petitioners were informed that the decision of the ECJAC was final.

The ECJAC, while recognizing in its decision that there had been no agreement or approval by the local union of the work or productivity standards as Article 20 requires and consequently awarding Sever and 10 others back pay for the period of their suspensions, nevertheless allowed the work standards to be put in effect as of May 1, 1977.

Thus the ECJAC implemented or approved these unreasonable productivity standards which the local union never had the opportunity to negotiate or discuss, without the approval and agreement of Petitioner Local 30, in violation of the clear language of Article 20 of the NMFA.

Petitioners then sued Helms Express and the Eastern Conference of Teamsters in an effort to obtain review of and ultimately set aside and vacate the decision of ECJAC which illegally allowed the work standards at Helms to be implemented. In their complaint, Petitioners alleged facts as set forth above. The Respondents filed motions to dismiss which were granted by the District Court and affirmed by the United States Court of Appeals for the Third Circuit. (See App. A and App. B attached hereto.)

In essence, the opinions of both the district and appeals courts held that Article 20, despite its language to the contrary, does not require agreement and approval of the local union before the work standards could be implemented if

the local unreasonably withholds its approval and agreement from a "reasonable productivity standard." (App. B at 9)

And while the lower courts never found that the local union did unreasonably withhold its approval from reasonable productivity standards, it held that this was a rational way in which the award could be derived from the agreement, and as such, it would not be disturbed.

POINT ONE

THE CONTINUING VITALITY OF THE FEDERAL LABOR POLICY FAVORING PRIVATE SETTLEMENT OF INDUSTRIAL DISPUTES, WHILE ASSUMING THAT THE PRIVATE GRIEVANCE PROCEDURE INSURES A FUNDAMENTALLY FAIR RESULT IS AT STAKE IN THIS CASE AND AS SUCH A QUESTION OF GREAT PUBLIC IMPORTANCE IS INVOLVED WHICH SHOULD BE REVIEWED BY THIS COURT.

The Federal Labor Policy which favors private settlement of labor disputes through the process of arbitration theoretically protects the working person by providing a quick, inexpensive and knowledgeable forum to resolve his problems. He need not spend the money of hiring a lawyer to file suit for him nor wait the long period of time the court litigation inevitably takes, and he can feel secure knowing that a person or committee familiar with his industry will hear the dispute. Finally, he knows that whatever the result, it will be final.

But the underpinnings of this policy require that he receive at least a relatively fair decision based upon the contract that the parties agreed to. If these awards are without question attributed finality no matter how far from the clear language of the contract they stray, then the theoretically sound federal labor policy is undermined.

The present action is such a situation and thus becomes a matter of great public importance. When matters of such importance are presented this Court will, in general, grant certiorari to consider the question. *International Brotherhood of Teamsters v. Vogt*, 354 U.S. 284 (power of a state to enjoin picketing).

POINT TWO

CERTIORARI SHOULD BE GRANTED IN THIS CASE TO DETERMINE THE CONFLICT BETWEEN THE CIRCUITS OF THE PRESENT CASE AND *DETROIT COIL CO. V. MACHINISTS, LODGE 82*, ___ F.2d ___ (6th Cir. Mar. 21, 1979), 100 LRRM 3138, WITH RESPECT TO ABILITY OF THE ARBITRATOR OR GRIEVANCE COMMITTEE TO AMEND THE CONTRACT OR SUBSTITUTE HIS OWN DISCRETION INSTEAD OF THE CONTRACT, IN REACHING A DECISION.

In the present action, the Third Circuit held that, despite clear and unambiguous language in Article 20 of the contract that the local union must approve and agree to productivity standards before the company can put them into effect, agreement by the local union isn't always necessary. Even though the decision of the ECJAC is silent as to how the ECJAC came to that conclusion, the Third Circuit reasoned that approval by the local isn't required if the local unreasonably withholds its approval from "reasonable productivity standards." And the circuit so held despite anything in the record to substantiate the possibility that the proffered hypothetical in fact had occurred. In fact, the allegations of the complaint totally negate the possibility by alleging that the standards were not reasonable and that the local never had the opportunity to negotiate. (See *infra*, Point 4)

In the Sixth Circuit case of *Detroit Coil Co. v. Machinists, Lodge 82, supra*, the court there held that the arbitrator

exceeded his authority by allowing a matter to be arbitrated even though the contract provided that the company must be *notified* by the union of its desire to arbitrate within a certain time period which the union failed to do. The arbitrator, in so ruling, held that a rational interpretation of the notification clause of the contract, consistent with past practice, permits the matter to be arbitrated.

The Sixth Circuit, relying on language from the Steelworkers Trilogy* in vacating the award, states as follows:

> In view of the clear and unambiguous language of Article V of the collective bargaining agreement, and since the record contains no evidence indicating a departure by the parties from the clear intendment of that language, we conclude that the arbitrator's award cannot be deduced rationally from the agreement, nor does it draw its essence from the agreement.
>
> The judgment of the district court is reversed. The case is remanded with directions to set aside the award of the arbitrator.... (100 LRRM at 3141-3142)

In the present action, like *Detroit Coil, supra*, the record contains no evidence indicating a departure by the parties from the clear intendment of the language of Article 20 which requires agreement by the local before the productivity standards can be implemented. In fact, Article 12 of the NMFA, made part of the record, in discussing grooming and clothing, states that "the Employer has the right to establish and maintain reasonable standards for wearing apparel and personal grooming." There is nothing in Article 12, however, about the local approving the grooming standards before they are implemented. It is clear that for a matter as important as work or productivity standards, the inclusion by the

*Two of the Trilogy cases are cited by the *Detroit Coil* Court: *U.S.W.A. v. Enterprise Wheel*, 363 U.S. 593 and *U.S.W.A. v. Warrior and Gulf Navigation*, 363 U.S. 574.

parties of language requiring agreement by the local before they were put into effect, was meant to mean what it says, and nothing less.

Where an important question has been differently decided by two different circuits, this Court will, in general, grant certiorari to resolve the conflict. See, for example, *FTC v. Flotill Products, Inc.*, 389 U.S. 179, *Willingham v. Morgan*, 389 U.S. 179.

POINT THREE

THE DETERMINATION OF THE COURT OF APPEALS IS IN CONFLICT WITH THE DECISIONS IN *UNITED STEEL WORKERS OF AMERICA V. ENTERPRISE WHEEL*, 363 U.S. 593 AND *UNITED STEEL WORKERS OF AMERICA V. WARRIOR AND GULF NAVIGATION*, 363 U.S. 574 DECIDED BY THIS COURT.

This Court, in a series of cases known as the *Steelworkers Trilogy*, made it clear that arbitration is favored as a method of resolving labor disputes and that courts will generally refrain from reviewing the merits of an arbitration award. *USWA v. Enterprise Wheel, supra*, at 596. However, a corollary principle having equal weight on labor arbitration was also articulated by the Supreme Court in *Enterprise Wheel*, at 597:

> [A]n arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.

In the present case, the ECJAC award, by its own language, recognizes that there must be agreement and approval by the local before the work standards can be put into effect. It awards the suspended men their back pay, but then mysteriously allows the unreasonable and still unapproved and non-agreed to standards to nevertheless go into effect. This is a perfect example of a grievance committee "dispens[ing] its own brand of industrial justice" by making an award which "fails to draw its essence from the collective bargaining agreement. *Enterprise Wheel, supra.* See also Point Two, *infra.* As such the decision of the Court of Appeals conflicts with the decisions of this Court set forth above.

POINT FOUR

CERTIORARI SHOULD BE GRANTED IN THIS CASE IN THAT THE APPEALS COURT DECISION, BY NOT ACCEPTING AS TRUE THE WELL PLEADED ALLEGATIONS IN PETITIONER'S COMPLAINT, HAS DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS.

In the present action, both the district court and the court of appeals read into the clear and unambiguous language of Article 20 of the NMFA some additional language: that work standards can be implemented without the local's approval if the local unreasonably withholds its approval of a reasonable productivity standard. However, Petitioners alleged in the complaint that the standards were unreasonable and that the local union never even had the opportunity to discuss or negotiate these standards, much less unreasonably withhold its approval.

This Court has held that in considering a motion to dismiss, "the allegations of the complaint are taken as admitted and the Complaint is liberally construed in favor of the plaintiff." *Jenkins v. McKeithen*, 395 U.S. 411 at 421 (1969). This

principle of law is axiomatic. If the court of appeals had accepted Petitioners' allegations as true, the hypothetical which the appeals court proposed to justify the award of the ECJAC, could not possibly have existed in fact.

CONCLUSION

This Court should grant certiorari to review the questions presented in this Petition.

Respectfully submitted,

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APPENDIX A

In The

United States District Court

For The Western District of Pennsylvania

TEAMSTERS LOCAL UNION NO. 30 and TOM SEVER and all others similarly situated,

Plaintiffs

vs.

HELMS EXPRESS, INC., a division of RYDER TRUCK LINES, and the EASTERN CONFERENCE OF TEAMSTERS,

Defendants

Civil Action No. 77-1177

OPINION

Barron P. McCune, *District Judge*
February 2, 1978.

This action is brought pursuant to §301 of the Labor Management Relations Act of 1947, 29 U.S.C. §185(a), by employees of Helms Express, Inc. and by their local union, Teamsters Local No. 30, against Helms and the Eastern Conference of Teamsters (ECT), a subordinate body of the international union. Labor relations between the Teamsters Local Union No. 30 and Helms Express are governed by the National Master Freight Agreement (NMFA) and the Local Cartage Supplemental Agreement (Supplement). The plaintiffs contend that Helms breached the provisions of the NMFA by instituting and enforcing productivity standards at its Irwin, Pennsylvania operation. They further contend that the Eastern Conference Joint Area Committee (ECJAC), the body set up to settle disputes under the con-

tract, ignored provisions of the contract and exceeded its authority in rendering a decision which approved the implementation of the productivity standards. Additionally, plaintiffs claim that the ECT breached an alleged duty of fair representation in that delegates of the ECT disregarded contract provisions and engaged in collusion with employer representatives on the ECJAC to illegally enact these standards.

Defendants have filed motions to dismiss the Complaint on the following grounds: (1) that the claim against Helms is based upon a grievance which was considered in the ECJAC decision not subject to review on the merits by this court under the facts alleged, and (2) that the Complaint fails to allege facts sufficient to establish a breach of duty of fair representation by the ECT.

The dispute in this case involves the interpretation of Article 20 of the NMFA which reads, in pertinent part, as follows:

> "The Union and the Employer recognize the principle of a fair day's work for a fair day's pay; that jobs and job security of employees working under this Agreement are best protected through efficient and productive operations of the Employer and the trucking industry. The Employer may establish reasonable work standards which shall take into account all factors relating to the work assignment, run, terminal and territorial operational conditions, subject to agreement and approval with the Local Union, and to be filed for approval with the Conference Joint Area Committee."

The Complaint alleges that Helms unilaterally enacted productivity standards without agreement or approval of any kind by the local union, and that all the factors referred to in Article 20 were not taken into consideration. The Complaint further alleges that on or about October 22, 1976,

plaintiff Sever was notified by Helms that his productivity measurement fell below a certain standard, as a result of which he was suspended without pay for one day. Several other employees received similar suspension for alleged poor performance. Local No. 30 filed grievances on behalf of the suspended employees, the parties agreeing that the grievance of plaintiff Sever would serve as the "pilot" grievance with its result to be controlling upon the others. (Complaint ¶¶18, 19; Exhibit B).

The procedures governing this type of grievance are set forth in Articles 45 and 46 of the Supplement. Pursuant to Article 45, the employers and unions have created the Western Pennsylvania Joint Area Grievance Committee and the ECJAC. Each Committee is made up of an equal number of union and employer representatives. These two Committees are given the power "to settle disputes which cannot be settled between the Employer and the Local Union" in the preliminary stages of the grievance procedure. (Supplement, Article 45, §3.)

In the event the dispute cannot be settled in the earlier stages, Article 46 provides for a hearing before the Western Pennsylvania Joint Area Committee. When this Committee, by a majority vote, settles a dispute, no appeal may be taken, and the decision is final and binding on both parties. If there is a dead-lock at this stage, the matter is submitted for decision to the ECJAC, which also attempts to settled the dispute by a majority vote. Again, a majority decision by the ECJAC is final and binding on the parties, with no further appeal.

In this case, the matter proceeded to the ECJAC. On April 27, 1977, following a hearing, the Committee rendered the following decision (Complaint, Exhibit D):

> "The panel in executive session, motion made, seconded and carried that, due to the company's failure

to obtain agreement with the local union or approval of this committee prior to putting into effect the productivity measurement program, the specific claims listed in this case are upheld on the basis of 8-hours' pay for each day of suspension. The Committee further ruled that the productivity measurement program, as presented, is not in violation of the contract and may be implemented beginning May 1, 1977. Cost split."

At the urging of the local union, the matter was reconsidered by the ECJAC at its July, 1977 meeting. It was held that the original decision was final and binding.

The gravamen of plaintiff's claim consists of two separate but related arguments. They contend that the ECJAC had no authority to approve the productivity standards (1) because Article 20 of the NMFA clearly requires the agreement of the local union before such standards may be implemented, and (2) because the sole issue before the ECJAC was the propriety of the individual employees' suspensions, not the propriety of the productivity standards.

The threshold question presented by the defendants' motions is the proper role of this court in reviewing the merits of the ECJAC decision.[1] In *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S. Ct. 1358, 4 L.Ed. 2d (1960), the Supreme Court prescribed that role as follows:

> "The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements." 363 U.S. at 596.

[1]The decision of the ECJAC, the parties chosen instrument for the settlement of grievances under their contract, is subject to the same standard of judicial review as the decision of an independent arbitrator. *General Drivers, Warehousemen & Helpers, Local Union No. 89 v. Riss & Co.*, 372 U.S. 517, 83 S. Ct. 789, 9 L.Ed. 2d 918 (1963)

> "Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; ... He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award." 363 U.S. at 597.

In *Ludwig Honold Mfg. Co. v. Fletcher*, 405 F.2d 1123 (1969), the Third Circuit further defined the language employed by the Supreme Court, stating that:

> "... a labor arbitrator's award does 'draw its essence from the collective bargaining agreement' if the interpretation can in any rational way be derived from the agreement, viewed in the light of its language, its context, and any other indicia of the parties intention; only where there is a manifest disregard of the agreement totally unsupported by principles of contract construction and the law of the shop, may a reviewing court disturb the award." 405 F.2d at 1128.

Applying this standard to the facts before us, we have concluded that the ECJAC decision was rationally derived from the contract, and thus may not be disturbed by this court. The decision was brief and offered little explanation other than the statement that Helms' standards were "not in violation of the contract". However, the failure to articulate reasons is not fatal to an arbitrator's decision. *Enterprise Wheel, supra*, at 598; *N. F. & M. Corp. v. United Steelworkers of America*, 524 F.2d 756 (3d Cir. 1975). It is sufficient that we find support for the ECJAC decision in the language of the NMFA and the Supplement.

It is obvious that the ECJAC interpreted the collective bargaining agreement as follows: the parties intended that the ECJAC have the power to approve reasonable produc-

tivity standards for prospective application, even though there had been no agreement between the employer and the local union. This interpretation could have been rationally derived from the language of the contract.

Article 20 of the Supplement makes no provision for the resolution of a dispute over productivity standards. It states that reasonable standards may be established "subject to agreement and approval of the local union, and to be filed for approval with the Conference Joint Area Committee". Plaintiffs argue that there is only one possible construction of this clause: productivity standards may never be implemented without local union approval. However, Article 20 contains other language which renders an alternative interpretation possible. "The Union and the employer recognize the principle of a fair day's work for a fair day's pay." The parties also recognize the interrelationship between an efficient and productive trucking industry and job security. Viewing Article 20 as a whole, the ECJAC could have construed the language to imply an agreement between the parties to the following effect:

(1) that when reasonable productivity standards are enacted by the employer, the union's approval will not be unreasonably withheld, (2) that in a case where the union and employer cannot agree on productivity standards, the matter will be resolved through the contract grievance machinery, and (3) that, in such a case, the ECJAC has the power to approve or disapprove, i.e., to determine whether the standards are reasonable in light of the factors set forth in Article 20.

Assuming that the ECJAC has the power under the contract to approve productivity standards for prospective application, plaintiffs then argue that the use of the power was not appropriate here, because the only issue before the Committee was the propriety of the individual suspensions.

However, the contract is certainly capable of an interpretation which gives the Committee the authority to resolve "disputes" over productivity standards within the operation of the individual grievance machinery. Article 45, §3 and Article 46, §1(e) authorize the Committee to "settle disputes". Clearly, the suspensions created a "dispute" which the parties agreed to submit to the grievance procedure. The "dispute" involved the unilateral enactment of standards by Helms, an issue which the Committee resolved in favor of the individuals suspended, and the reasonableness of the standards themselves, an issue which was resolved in Helms' favor. In settling this dispute, the Committee "construed the agreement as a whole,...[and]...gave it a construction rendering performance of the contract possible rather than one which rendered its performance impossible or meaningless". *Ludwig, supra*, at 1132.

Ultimately, of course, plaintiffs oppose establishment of the standards on the grounds that "factors relating to work assignment, run, terminal and territorial operational conditions" were not taken into account as Article 20 mandates. This court, however, has no reason to believe that the ECJAC disregarded these factors in determining that the standards were "not in violation of the contract". We will not disturb the Committee's decision, the parties having agreed to be bound by it.

Plaintiffs have also alleged a breach of the duty of fair representation by the ECT, claiming that ECT representatives engaged in "conscious collusion" with employer representatives on the ECJAC to ignore the provisions of Article 20. These allegations are insufficient for two reasons. First, plaintiffs have done no more than allege that the union delegates to the ECJAC have complied with their duties under the grievance procedure established in the collective bargaining agreement, wherein cooperation between union and

management is required in order to "settle disputes" by a majority vote. This procedure for settling grievances has been approved in *Price v. International Brotherhood of Teamsters, Ect.*, 457 F.2d 605 (3d Cir. 1972). Other than the statement in paragraph 25 of the Complaint that the ECJAC decision "necessarily required the affirmative vote or votes of the delegates of the Defendant ECT," there are no factual allegations to support the conclusory allegation of collusion. Second, the ECT does not owe a duty of fair representation to the plaintiffs under the facts alleged. The ECT is not a party to the NMFA or the Supplement. It is not the exclusive bargaining representative of the plaintiffs. The union members of the ECJAC are not delegates of the ECT, as plaintiffs allege, but merely "delegates from the Eastern Conference Area," according to Article 45, §2 of the Supplement. Plaintiffs theory of the existence of a duty in the ECT under these circumstances is not supported by any authority of which this court is aware.

For the reasons stated herein, the motions of the defendants to dismiss the Complaint will be granted. An appropriate order follows.

/s/ BARRON P. McCUNE
Barron P. McCune
United States District Judge

Dated: February 2, 1978.
cc: Counsel of record.

IN THE
United States District Court
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TEAMSTERS LOCAL UNION NO. 30 and TOM SEVER and all others similarly situated,
Plaintiffs

vs.

HELMS EXPRESS, INC., a division of RYDER TRUCK LINES, and the EASTERN CONFERENCE OF TEAMSTERS,
Defendants

Civil Action No. 77-1177

ORDER

AND NOW, February 2, 1978, upon the consideration of motions filed by the defendants, Helms Express, Inc. and the Eastern Conference of Teamsters, to dismiss the Complaint, the motions are granted and the Complaint is hereby dismissed.

/s/ BARRON P. McCUNE
Barone P. McCune
United States District Judge

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APPENDIX "B"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 78-1404

TEAMSTERS LOCAL UNION NO. 30, AND TOM SEVER and all others similarly situated,

Appellants,

v.

HELMS EXPRESS INC., a div. of RYDER TRUCK LINES, and the EASTERN CONFERENCE OF TEAMSTERS

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

(D.C. Civil No. 77-1177)

Submitted Under Third Circuit Rule 12(6)
November 17, 1978

Before: ALDISERT and HUNTER, *Circuit Judges*, and GERRY, *District Judge.**

(Opinion filed January 5, 1979)

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*Honorable John F. Gerry, of the United States District Court for the District of New Jersey, sitting by designation.

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OPINION OF THE COURT

ALDISERT, *Circuit Judge.*

This appeal requires us to decide the propriety of an arbitration award handed down by the Eastern Conference Joint Area Committee (ECJAC), a joint union-employer committee designed to resolve disputes in the trucking industry in a fifteen state area in the Eastern United States. The district court dismissed the complaint seeking to set aside the award which had denied a grievance brought by International Brotherhood of Teamsters Local Union No. 30 and certain of its members against Helms Express, Inc., a division of Ryder Truck Lines. The grievants have appealed. We affirm.

Appellants accept the general principle that courts should refuse to review the merits of an arbitration award where the parties have contractually agreed to be bound by the arbitrator's decision, *United Steelworkers of America*

v. Warrior & Gulf Navigation Co., 363 U.S. 574, 580-83 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960), but seek to apply three exceptions to this precept. First, they assert that the ECJAC award is invalid because it does not "draw its essence from the collective bargaining agreement" and therefore is the product of an abuse of arbitral authority; second, that an ECJAC award should not deserve the same degree of judicial deference as an award by a third party arbitrator; and, third, that the award is invalid because the Eastern Conference breached its duty of fair representation, *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 571 (1976).

I.

To understand the nature of the grievance and the arbitration machinery, it is necessary first to examine the controlling provisions of the collective bargaining agreement entered into by the Teamsters, including Local 30, of which Tom Sever, the individual grievant, is a member. Helms, which employs Sever, and Local 30 are parties to the National Master Freight Agreement (NMFA) and the Joint Council No. 40 Local Cartage Supplemental Agreement. The NMFA is the product of multi-employer bargaining between Trucking Employers, Inc. and the Teamsters National Freight Industry Negotiating Committee, which represents local unions, including Local 30, affiliated with the International Brotherhood of Teamsters. Both the local unions and the Teamsters National Freight Industry Negotiating Committee are parties to the NMFA. This industry-wide agreement is supplemented by certain local agreements, which specify additional terms and conditions applicable only to specified employers and local unions. In the instant case, the NMFA incorporates the supplement between the Western Pennsylvania Motor Carriers Association and the Teamsters Joint Council No. 40 Freight Division (Supplement), representing specified

local unions including Local 30. The NMFA and the Supplement constitute the entire collective bargaining agreement between the parties to that contract and contain a mandatory procedure for the resolution of all disputes between the parties.

Article 45 of the Supplement creates a joint area grievance committee, known as the Western Pennsylvania Teamsters and Employers Joint Area Committee, consisting of three representatives appointed by the employers. It also creates the Eastern Conference Joint Area Committee, similarly consisting of delegates of the local unions and the employers from the Eastern Conference area. Under Section 3 of Article 45 these two committees are charged with the responsibility of settling disputes which cannot be settled between the employer and the local union in the earlier stages of the grievance machinery.

The mechanics of the grievance machinery are set forth in Section 1 of Article 46 of the Supplement. That section specifies several preliminary steps to be followed by the parties in an attempt to adjust the matter short of a hearing. In the event the matter cannot be so adjusted, a hearing is held before the Western Pennsylvania Joint Area Committee which attempts to decide the matter by majority vote. If a majority vote is reached, no appeal may be taken and the decision is final and binding on both parties. If the Western Pennsylvania Joint Area Committee deadlocks, the matter is referred to ECJAC which, again by a majority vote, attempts to settle the dispute.[1] If the dispute is settled, the decision of ECJAC is final and binding on both parties and there is no right to a further appeal.[2] Section 1(a) of Article 8 provides that requests for interpretation of the NMFA shall be submitted directly to the Conference Joint Area Committee (here, ECJAC) for the making of a record on the matter, after which the matter shall be immediately referred to the National Grievance Committee for resolution. Otherwise, the contract provides that all factual grievances or questions of interpretation arising under the Supplement, or factual grievances arising under the NMFA, shall be processed in accordance with the grievance procedure of the Supplement. Thus, a grievance which a local union chooses to process through the local grievance machinery can be referred to the National Grievance Committee *only* if the Conference Joint Area Committee deadlocks.

1. Discharge cases are handled differently in that the local union may appeal the matter to an independent arbitrator, rather than proceeding to ECJAC.

2. The NMFA also creates in Section 1(b) of Article 8 a National Grievance Committee composed of an equal number of employer and union representatives. Matters which are deadlocked after the completion of the prior steps of the grievance procedure are referred to the National Grievance Committee for resolution. When the National Committee deadlocks, the parties may resort to economic pressure or litigation.

Unlike more restrictive arbitration provisions found in some labor agreements, the scope of the authority of the Joint Area Committees under the NMFA is extremely broad. The function of the Joint Area Committees, as set forth in the Supplement, is to "settle" disputes. In Section 3 of Article 45, it is stated that "it shall be the function of the various Committees above referred to to settle disputes which cannot be settled between the employer and the local union in accordance with the procedures established in Section 1 of Article 46." Appendix at 63.

II.

The instant dispute arises over the application of Article 20 of the NMFA, which states, in pertinent part:

> The Union, its members and the Employer agree at all times as fully as it may be within their power to further their mutual interest and interests of the trucking industry and the International Brotherhood of Teamsters nationwide. The Union and the Employer recognize the principle of a fair day's work for a fair day's pay; that jobs and job security of employees working under this Agreement are best protected through efficient and productive operations of the Employer and

> the trucking industry. The Employer may establish reasonable work standards which shall take into account all factors relating to the work assignment, run, terminal and territorial operational conditions, subject to agreement and approval with the Local Union, and to be filed for approval with the Conference Joint Area Committee.

Appendix at 52. The grievance involves the implementation of productivity standards by Helms, Local 30's objection to those standards, and a subsequent determination of their validity by ECJAC.

The complaint filed in the district court alleges that on or about October 22, 1976, appellant Sever was informed by Helms that his productivity fell below a certain standard, and that he was being suspended without pay for a period of one day. Approximately ten other employees received similar suspensions for failure to meet the productivity standards. It is alleged that the productivity standards or measurement program were enacted unilaterally by Helms without negotiation, agreement, or approval by the local union. It is also alleged that this productivity standard or measurement program did not take into account all the factors referred to in Article 20.

After being informed of the deficiencies in their productivity, Sever and the other employees complained to Local 30, which filed grievances on their behalf. Local 30 and Helms agreed that Sever's grievance would serve as the pilot grievance, with its result to be controlling upon the other employees. The grievance procedure set forth in the Supplement was followed. The Western Pennsylvania Joint Area Committee deadlocked, however, and the case was referred to ECJAC.

The grievance was then presented at an ECJAC meeting in Virginia in April 1977. After hearing a presentation by both Helms and Local 30, ECJAC rendered the following decision:

> The panel in executive session, motion made, seconded and carried that, due to the company's failure to obtain agreement with the local union or approval of this committee prior to putting into effect the productivity measurement program, the specific claims listed in this case are upheld on the basis of 8-hours' pay for each day of suspension. The committee further ruled that the productivity measurement program, as presented, is not in violation of the contract and may be implemented beginning May 1, 1977. Cost split.

Appendix at 6, 13.

Under the terms of the Supplement, this decision by ECJAC was final and binding upon the parties, and no appeal could be taken. However, Local 30's president wrote to the Teamsters International Union, and attempted to appeal the decision and obtain a rehearing. The matter was referred by the International back to ECJAC, which ruled that the original decision was "final and binding." Appendix at 6-7, 16-17.

After exhausting the contractual grievance procedure without obtaining a favorable result, Local 30 and Sever filed a complaint in the district court pursuant to section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), seeking to set aside the decision of ECJAC. The complaint alleged that the productivity standards were enacted in violation of the NMFA; that the Eastern Conference violated its "duty of fair representation" to Local 30 and its members by its "conscious collusion" with the employer representatives on the ECJAC, and by failing to uphold the grievance of the plaintiffs or to consider the collective bargaining agreement; that the decision of ECJAC was beyond its authority under the NMFA, in that it was not adequately grounded in nor did it draw its essence from the basic collective bargaining agreement; and that the ECJAC decision was arbitrary, capricious and internally inconsistent because the procedures employed failed to meet basic standards of fairness, Appendix at 7-8.

Local 30 and Sever filed an application for a temporary restraining order and a preliminary injunction. A hearing was held before Judge Daniel J. Snyder, Jr., at which certain evidence was introduced and oral argument by counsel was had. Thereafter, appellants Local 30 and Sever withdrew their request for a temporary restraining order. Subsequently Helms and Eastern Conference filed motions to dismiss, which were granted by Judge Barron P. McCune.

III.

In arguing that the ECJAC award is invalid because it does not "draw its essence from the collective bargaining agreement," appellants urge that we apply the decision in *International Brotherhood of Teamsters, Local 249 v. Western Pennsylvania Motor Carriers Ass'n*, 574 F.2d 783 (3d Cir. 1978), as controlling precedent here. Appellants characterize the facts there as "almost identical to the matter now before this court." Appellants' brief at 2. We disagree. Appellants exaggerate the limited precedential effect of that case. The narrow issue presented there was the interpretation of a collective bargaining agreement clause that gave ECJAC authority over "inadvertent or bona fide errors made by the Employer(s) or the Union in applying the terms and conditions" of the agreement. 576 F.2d at 788. The background of alleged "inadvertent or bona fide error" was the common industry "spotting" practice whereby a carrier may instruct a driver to leave his trailer at a specified location, and not to remain with it during loading or unloading. Although "spotting" is a widespread practice, it had not been followed in Allegheny County, Pennsylvania, where it has traditionally been the subject of collective bargaining discussions. The record indicated that, with the exception of a few designated terminal facilities, the peculiar Allegheny County practice had been "in existence since the 1958 collective bargaining agreement." *Id.* at 785. Accordingly, we held that a practice of almost 20 years duration did not amount to an "in-

advertent or bona fide" error, thus divesting ECJAC of jurisdiction under the proffered theory.

Moreover, in *Teamsters Local 249* we reiterated the basic precepts which govern judicial review of labor arbitration awards: (1) courts have a limited role in reviewing an arbitrator's award; (2) the award will be set aside only if it does not draw its essence from the collective bargaining agreement; and (3) it will not be disturbed unless it can in no rational way be derived from the agreement or unless there is a manifest disregard of the agreement, totally unsupported by principles of contract construction and the law of the shop. *Id.* at 786 (citations omitted).

IV.

Measured by these precepts, we agree with the district court that ECJAC had jurisdiction to review the particular grievance in the case at bar, because the award can "in [a] rational way be derived from the agreement, viewed in the light of its language, its context, and . . . other indicia of the parties' intention." *Ludwig Honold Mfg. Co. v. Fletcher*, 405 F.2d 1123, 1128 (3d Cir. 1969).

Article 20 of the NMFA provides: "The Union and the Employer recognize the principle of a fair day's work for a fair day's pay." Appendix at 52. Article 47 allows an employer to discharge or suspend employees only for "just cause," Appendix at 64; clearly poor performance and productivity on the part of an employee would qualify as "just cause."

The agreement permits each employer to establish reasonable productivity standards and assumes that a local union would agree to and approve a reasonable productivity standard. It explicitly provides that following the local's approval, the standard shall "be filed for approval with the Conference Joint Area Committee." If ECJAC must ratify the local union's approval, it seems to be a rational interpretation of the contract that if the local union does not approve, as here, ECJAC nevertheless has

authority to review the productivity standard prior to implementation by the employer. To hold otherwise would vest in the local union an arbitrary, unreviewable right to disapprove productivity standards under Article 20 of the NMFA. ECJAC's award here is merely action that decides "unforeseen or unresolved problems arising out of gaps . . . in the contract," a practice we specifically approved in *Price v. International Brotherhood of Teamsters,* 457 F.2d 605, 610 (3d Cir. 1972).

V.

Although appellants concede that both the Supreme Court and this court have approved decisions rendered by the trucking industry's joint labor-management grievance committee, it nevertheless argues that we should not accord to ECJAC "the same, identical degree of judicial deference customarily accorded awards rendered by impartial arbitrators when challenged by employees." Appellants' brief at 14. Assuming that Local 30, a party to the NMFA, is not estopped from challenging a provision in the collective bargaining agreement—and this is a very generous assumption—we will not tarry long on this point because it is no longer an open question. "Joint committee awards are reviewed under the same standards as binding arbitration awards. *General Drivers, Warehousemen & Helpers, Local Union No. 89 v. Riss & Co., Inc.,* 372 U.S. 517, 83 S. Ct. 789, 9 L. Ed. 2d 918 (1963); *Bieski v. Eastern Automobile Forwarding Co.,* 396 F.2d 32 (3d Cir. 1968). *See Price v. Teamsters,* 457 F.2d 605 (3d Cir. 1972)." *Teamsters Local 249, supra,* 574 F.2d at 786 n.3. Moreover, we had previously stated that:

> It is not arbitration per se that federal policy favors, but rather final adjustment of differences by a means selected by the parties. If the parties agree that a procedure other than arbitration shall provide a conclusive resolution of their differences, federal labor policy encourages that procedure no less than arbitration. A determination made pursuant to that chosen procedure is no less enforceable in a federal court than is an arbitration award.

United Mine Workers of America, District No. 2 v. Barnes & Tucker Co., 561 F.2d 1093, 1096 (3d Cir. 1977).

VI.

Finally, we address appellants' contention that the district court erred in dismissing their action against the Eastern Conference for breach of the duty of fair representation. Appellants correctly premise this argument with the proposition that a court may review the merits of an arbitration award where the union presenting the grievance has breached its duty of fair representation, *Hines v. Anchor Motor Freight, Inc.,* 424 U.S. 554, 567 (1976), and that section 301 of the Labor Management Relations Act may provide the jurisdictional basis for employee suits against employers and labor organizations. That section provides that "[s]uits for violation of contracts between an employer and a labor organization representing employees . . . may be brought in any district court . . . ." 29 U.S.C. § 185(a). The prerequisite for jurisdiction is a contract between an employer and a labor organization. *Smith v. Evening News Ass'n,* 371 U.S. 195, 200 (1962). However, § 301 creates federal jurisdiction only over parties to the contract, and federal jurisdiction under § 301 is limited to "[s]uits for violation of contracts between an employer and a labor organization . . . ." 29 U.S.C. § 185. Thus in *Aacon Contracting Co. v. Ass'n of Catholic Trade Unionists,* 178 F. Supp. 129 (E.D. N.Y. 1959), claiming that the defendant union attempted to compel plaintiff to breach a collective bargaining agreement it had with another union, plaintiff attempted to assert federal jurisdiction over the dispute even though there was no contractual relationship between plaintiff and defendant. The complaint was dismissed and the Second Circuit af-

firmed, 276 F.2d 958 (2d Cir. 1960), on the opinion of the trial judge: "The language of the statute is explicit. It specifically refers to suits for violation of contracts between an employer and a labor organization. In this case there is no contractual relationship between the parties." 178 F. Supp. at 130. While clearly this does not prevent Sever, as an individual member of a signatory union from claiming under § 301, *Smith v. Evening News Ass'n, supra,* 371 U.S. at 200, he may only bring suit against the parties signatory to the agreement, and here the Eastern Conference is not a party.

The Eastern Conference is not a party to any collective bargaining agreement and represents no employees directly; it has never been a party to any contract with Helms. The NMFA and Supplement specifically state that only the Teamsters National Freight Industry Negotiating Committee and specific local unions are parties to the Agreement, Appendix at 38. Similarly, the preamble to the Supplement lists the parties by name, indicating only that they are affiliated with the Conference and the International Union. Neither the Conference nor the International are signatories. Thus, because the Eastern Conference is not a party to the contract, the district court lacked jurisdiction under § 301 over the Conference.

More important, the duty of fair representation is implied from the congressional grant of exclusive recognition accorded the labor organization selected by a majority of the employees in an appropriate bargaining unit. 29 U.S.C. § 159(a). The duty of fair representation imposes on the statutory representative a duty to serve the interest of all bargaining unit employees without hostility to any. *Steele v. Louisville & Nashville Railroad,* 323 U.S. 192 (1944). The duty prohibits fraud, deceitful or dishonest conduct which "could not be otherwise regulated by the substantive federal law." *Motor Coach Employees v. Lockridge,* 403 U.S. 274, 301 (1971); *Humphrey v. Moore,* 375 U.S. 335, 348 (1964). But the parties to the NMFA, including Local 30, did not make the Conference the statutory representative of any employees. The contract states that "the National Union Committee and Local Unions . . . are the exclusive representatives of all employees" covered by the Agreement. Appendix at 40, 41-42. The contract clearly obligates the local unions, not the Conference, to process the grievances of all employees within their jurisdiction, Appendix at 63. As the complaint alleges, it is clear that Local 30 "has been the exclusive collective bargaining representative of the individual plaintiffs," Appendix at 3, and, accordingly, it is Local 30 and not the Eastern Conference that owes a duty of fair representation to its members employed at Helms. *Walters v. Roadway Express, Inc.,* 400 F. Supp. 6, 16 (S.D. Miss. 1975), *aff'd in pert. part,* 557 F.2d 521 (5th Cir. 1977); *Brooks v. Southwestern Transportation Co.,* 97 L.R.R.M. 2616, 2618 (N.D. Tex. 1978); *Hughes v. Shoreline Beverage Distributing Co.,* 85 L.R.R.M. 2071, 2072 (S.D. Cal. 1973).

VII.

Because this case follows quickly on the heels of *Teamsters Local 249,* it is imperative that we emphasize again both the limited precedential effect of that case and the oft-stated imperative of the Supreme Court: " 'An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.' *United Steelworkers of America v. Warrior & Gulf Navigation Co.,* 363 U.S. 574, 582-83, 80 S. Ct. 1347, 4 L. Ed. 2d 1409 (1960) (footnote omitted). Thus, the arbitral forum is the primary arena for the settlement of labor disputes." *United Steelworkers of America v. NLRB,* 530 F.2d 266, 273 (3d Cir.) (footnote omitted), *cert. denied sub nom. Dow Chemical Co. v. United Steelworkers of America,* 429 U.S. 834 (1976). Arbitration is the favored alternative forum for dispute resolution. *Gate-*

way Coal Co. v. UMWA, 414 U.S. 368, 377, 382 (1974); *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195, 226, 82 S. Ct. 1328, 8 L. Ed. 2d 440 (1962) (Brennan, J., dissenting) ("The arbitration process . . . [is] a kingpin of federal labor policy"); *Arlan's Department Store of Michigan, Inc.*, 133 N.L.R.B. 802, 808 (1961), *The Supreme Court, 1969 Term*, 84 HARV. L. REV. 30, 199 (1970); Note, *Labor Injunctions, Boys Markets, and the Presumption of Arbitrability*, 85 HARV. L. REV. 636, 637 (1972).

We reiterate the basic tenets of contemporary labor policy as have been summarized by the Supreme Court and this court: (a) today's interdependent and technologically advanced economy dictates that labor-management relations be as peaceful as possible; (b) where labor and management agree on a forum for the peaceful resolution of disputes, that agreement should be honored; (c) arbitration is the favored alternative forum for dispute resolution; and (d) congressional emphasis in labor legislation has shifted from protection of the nascent labor movement to the encouragement of collective bargaining and to administrative techniques for the peaceful resolution of industrial disputes. *See* cases and authorities collected in *Steelworkers v. NLRB, supra*, 530 F.2d at 275; *see also Republic Steel Corp. v. U.M.W.A.*, 570 F.2d 467, 473 (3d Cir. 1978).

The joint labor-management committees created under the collective bargaining agreements between the Teamsters and the freight industry reflect a mature and enlightened method to resolve industrial disputes. These institutions implement the national labor policy as mandated by Congress and will be given maximum respect by the courts.

The judgment of the district court will be affirmed.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit

(A.O. U. S. Courts, International Printing Co., Phila., Pa.)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that three true and correct copies of the foregoing Petition for Writ of Certiorari were served upon each of the following by first class mail, postage prepaid this 6th day of June, 1979:

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